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**DIGEST OF RECENT VIRGINIA DECISIONS.**

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**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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BLANKENBAKER et al. v. EARLY et al.

June 15, 1922.

[112 S. E. 599.]

**1. Wills (§ 587 (2)\*)—Presumption against Partial Intestacy Does Not Enlarge Specific Description in Residuary Clause.**—Though the presumption is that testator did not intend to die intestate as to any of his property, where it is manifest that a gift of the residuum is confined to a particular fund or description of property, or to some certain residuum, the residuary legatees will be restricted to what is thus particularly given.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 787.]

**2. Wills (§ 588\*)—Residue of Definite Fund, Part of Fund and Not Residue in Ordinary Meaning of Term.**—Where definite portions of a definite fund are given to various persons and then the residue of the fund is given to some one else, the residue is as much a definite fund as any other part of the whole fund so given, and is not residue in the ordinary meaning of the term.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 805.]

**3. Wills (§ 456\*)—Testator Presumed to Use Words in Ordinary Sense.**—Testator is presumed to use the words of his will in their primary or ordinary sense, and in construing the will the words are to be taken in that sense, unless, from the context, the testator intended to use them in a different sense.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 794.]

**4. Wills (§ 453\*)—Presumed that Testator Intended Property to Go in Accordance with Laws of Descent.**—Where an ambiguity exists in a will, unless there is an intent to the contrary, it is presumed the testator intended his property to go in accordance with laws of descent and distribution.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780.]

**5. Wills (§ 441\*)—Intention Determined with Reference to Testator's Situation When Making Will.**—The primary consideration and rule of construction is to determine the intention of the testator from the language used, and, if the meaning is plain, the will must be given effect accordingly; but, if there is doubt as to the meaning, the court

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

will place itself as nearly as possible in the testator's situation at the time of making the will.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780.]

**6. Wills (§ 534\*)—Clause as to Sums Derived from Proceeds of Definite Fund Held Not to Include Other Funds.**—A clause directing the executor to sell all the real and personal estate with certain exceptions, and after paying debts and certain legacies "the remainder of the money to be equally divided between six of the children," does not include other lands or the money derived from the sale of other lands.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 805.]

**7. Wills (§ 584\*)—Exception of Land Previously Deeded to Children Excepted from Operation of Will Lands Deeded to Child Subject to Reversion if Grantee Died without Issue.**—Where testator directed his executor to sell all the real and personal estate except that deeded to his children, and having deeded certain land to his daughter, reserving reversionary interest in case she should die without issue, the reversion was excluded from its operation.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 805.]

Burks, J., dissenting.

Appeal from Circuit Court, Madison County.

In the matter of the estate of Richard Early, deceased. On bill between W. A. Early and others and A. N. Blankenbaker and others to construe will. From an order holding that testator did not die intestate as to a certain parcel of land, the latter appeal. Reversed and entered.

*John S. Chapman*, of Stanardsville, for the appellants.

*N. G. Payne*, of Madison, and *Edwin H. Gibson*, of Culpeper, for the appellees.

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JENNINGS *v.* COMMONWEALTH.

June 20, 1922.

[112 S. E. 602.]

**1. Indictment and Information (§ 161 (8)\*)—Trial Court May Allow Amendment of Bill of Particulars to Correspond with Proof after an Election between Acts.**—Where, in a prosecution for violating the liquor law, on defendant's demand, the prosecutor elected to proceed on the charge of selling and keeping liquor for sale, it was within the trial court's discretion to permit prosecutor, before the conclusion of the commonwealth's testimony, to amend the bill of particulars and substitute the charge of illegally transporting for the charge of keeping for sale.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 381.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.